2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Working paper submitted by Palestine to the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

Implementation of the 1995 Resolution on the Middle East of the 1995 Review and Extension Conference of the Parties to the Non-Proliferation Treaty and the Final Document of the 2000 Review Conference of the Parties to the Treaty

1. Palestine welcomes the decision of the Preparatory Committee at its third session to include agenda item 16, entitled "Review of the operation of the Treaty, as provided for in its article VIII (3), taking into account the decisions and the resolution adopted by the 1995 NPT Review and Extension Conference and the Final Document of the 2000 Review Conference".

2. Palestine endorses the working papers presented by the Arab Group and the members of the Group of Non-Aligned States parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

3. The continued existence of nuclear weapons and their proliferation represents the most serious threat to humanity's survival, especially when proliferation occurs in a region mired in conflict because of a belligerent occupation, like the Middle East. Hence, it is imperative that the international community ensure the earliest establishment of a nuclear-weapon-free zone in the Middle East.

4. There are several international resolutions and papers that aim to advance that goal, which should be translated into effective measures that guarantee achieving this most important goal. Since 1974, the General Assembly has adopted resolutions annually that call for the establishment of a nuclear-weapon-free zone in the Middle East. Since 1979, the General Assembly has also annually adopted resolutions addressing the risk of nuclear proliferation in the Middle East. Security Council resolution 487 (1981) and paragraph 14 of Security Council resolution 687 (1991) also call for the establishment of a nuclear-weapon-free zone in the Middle East.

5. In 1995, the Review and Extension Conference of the Parties to the Non-Proliferation Treaty adopted a resolution on the Middle East. In paragraph 4 of the 1995 Resolution on the Middle East, States called upon "all States in the Middle

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East that have not yet done so, without exception, to accede to the Treaty as soon as possible and to place their facilities under full-scope International Atomic Energy Agency safeguards". On the basis of that Conference, the Non-Proliferation Treaty was indefinitely extended without a vote that year. The same call was renewed in the Final Document (Part I) of the 2000 Review Conference of the Parties to the Treaty, which also recognized that the 1995 Resolution would remain valid until its goals and objectives were achieved. Palestine maintains that the 2010 Review Conference of the Parties to the Treaty should reiterate that the 1995 Resolution on the Middle East is the basis on which the Treaty on the Non-Proliferation of Nuclear Weapons was indefinitely extended in 1995 and that it remains applicable until its goals and objectives are achieved.

6. Regrettably, after 15 years, the objectives and priorities of these Conferences remain unrealized. Israel remains the only State in the Middle East that has not acceded to the Treaty on the Non-Proliferation of Nuclear Weapons, nor placed its nuclear facilities under the full-scope International Atomic Energy Agency (IAEA) safeguards. In fact, Israel has yet to declare its intention to do so and to renounce possession of nuclear weapons. This represents the main barrier towards the realization of the goal of universal adherence to the Treaty and the establishment of a nuclear-weapon-free zone in the Middle East. Other major obstacles are the double standards adopted by a number of countries in dealing with regional nuclear issues. Such policies and actions have undermined the credibility and effectiveness of the Treaty, particularly in relation to providing security to the Member States in the Middle East. They have also weakened international efforts undertaken to date to achieve disarmament, nuclear non-proliferation, and the uses of nuclear energy for peaceful purposes.

7. This is a cause for grave concern to all States in our region, as it constitutes a serious threat to their security. But it is particularly distressing to Palestine and its people, especially in view of Israel's behaviour as a belligerent occupying Power, consistently proven to act with utter disdain towards international law, while being repeatedly provided with immunity from international accountability for its repeated infringements upon other States' sovereignty and territory. Equally alarming, there are several reports of leakages from the Israeli Dimona nuclear facilities, an increase in cancer cases in areas surrounding Dimona and among the workers and the risk of earthquakes or radiation leakage from the Dimona reactors, which are well past their functional life. Moreover, Palestinian civilians who live within the range of contamination are not afforded any protection from such threats.

8. In this regard, we believe it is vital to push for the implementation of the package deal on the indefinite extension of the Treaty of 1995 NPT Review and Extension Conference, in particular in connection with the Resolution on the Middle East. However, ignoring the implementation of the resolution could lead to a nuclear arms race in the region, a prospect too devastating to ponder. The 13 practical steps towards nuclear disarmament, adopted by the 2000 Review Conference, must also be respected in order to maintain the credibility of the Treaty.

9. To maintain the credibility of the Treaty and to achieve its universality, we call on the 2010 Review Conference to adopt immediate practical steps to implement the 1995 Resolution and the 2000 Final Document regarding the Middle East. Taking a proactive approach would necessitate the utilization of all measures available to State parties to bring about the immediate implementation of the resolution and

documents in question, including taking specific practical actions by State parties in the following review cycle in case of non-compliance.

10. Realizing these important goals necessitates political will. To start, we call for the allocation of specific time at the 2010 Review Conference to review the implementation of the Resolution on the Middle East, adopted by the 1995 Review and Extension Conference, and the Final Document of the 2000 Review Conference. In addition, we believe the issue in question merits the establishment of a subsidiary body to Main Committee II of the 2010 Review Conference to consider and recommend proposals on the implementation of the resolution in question.

11. Follow-up is also essential. In this regard, we propose the establishment of a Standing Committee, to follow up on the implementation of the recommendations concerning the Middle East. It is imperative that the efforts to achieve this goal be accompanied by legal efforts, with the goal of reaching an international legally binding instrument on security assurances to ensure the active protection of non-nuclear-weapon States until the complete elimination of this type of weapon.

12. Additionally, we call upon State parties to report to the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons on the steps they have taken to promote the achievement of a zone free of nuclear weapons in the Middle East and their views on realizing the goals and objectives agreed on in the 1995 and 2000 Conferences.

13. This concerted effort and practical steps are essential to the achievement of peace and security in the Middle East. Anything less would undermine the foundations of the Treaty and risks rendering the Treaty invalid, plunging the region into the abyss of mass destruction possibilities.

14. Peace, security and stability in our region cannot be achieved by developing, possessing and stockpiling nuclear weapons. Neither can they be achieved through a glaring imbalance in military capabilities, particularly through the possession of nuclear weapons, especially when this possession is done under the false pretext of alleged threats. This pivotal goal must be intrinsically intertwined with ongoing efforts to reach peace through ending the belligerent occupation that Israel has maintained for over four decades, which has consistently posed the gravest threat to security and peace in the region and has repeatedly violated the rights of the peoples living under it. Equally, getting rid of this destructive weapons programme should not be tied to any preconditions; compliance should not be optional. Rather, it is a regional and global imperative that should not allow for exceptions.

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Peaceful research, production and use of nuclear energy

Working paper submitted by the Islamic Republic of Iran

1. To establish a balance between security concerns and the socio-economic requirements for development, especially for developing countries, article IV of the Treaty guarantees "the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty" and provides for an undertaking by all parties to the Treaty "to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy". This article also plays a crucial role as the main incentive set forth to encourage non-nuclear-weapon States to join the Treaty and thereby foster the non-proliferation regime.

2. This main pillar of the Treaty has been underscored in light of the increasing need of the world for nuclear energy in the third millennium. We have recently witnessed this promising trend in our region. We welcome the new initiatives of our brotherly neighbours to move towards the peaceful application of nuclear energy. This trend confirms once again the long-standing position of the Islamic Republic of Iran concerning the need for diversifying energy resources in order to guarantee our future requirements.

3. The inalienable right of all States parties to nuclear technology for peaceful purposes without discrimination indeed constitutes the very foundation of the Treaty. This inalienable right in itself emanates from two broader propositions. First, scientific and technological achievements are the common heritage of humanity. The second general proposition is the requisite balance between rights and obligations, which is the basis of any sound legal instrument. This balance guarantees the longevity of the legal regime by providing incentives for membership and compliance.

4. Article III, while providing for the undertaking by each non-nuclear-weapon State to conclude safeguards agreements with the International Atomic Energy Agency (IAEA), is equally explicit in articulating that the implementation of such safeguards shall be "in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or

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international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing".

5. This notion was duly noted in previous Review Conferences, particularly in the final document of the 2000 Review Conference when considering that "the strengthening of IAEA safeguards should not adversely affect the resources available for technical assistance and cooperation. The allocation of resources should take into account all of the Agency's statutory functions, including that of encouraging and assisting the development and practical application of atomic energy for peaceful uses with adequate technology transfer."

6. Given the importance of the peaceful applications of nuclear energy and nuclear technologies for human health, medical, industrial, agriculture, environmental protection and sustainable economic development, especially in developing countries, the statute of IAEA recognizes its role in encouraging and assisting "research on, and development and practical application of, atomic energy for peaceful uses throughout the world" and fostering "the exchange of scientific and technical information on peaceful uses of atomic energy".

7. The recent developments as a result of the involvement of other United Nations bodies and efforts to change some confidence-building measures, like suspension of parts of peaceful nuclear activities by States parties as mandatory, is a matter of grave concern. This action, which is in full contravention of article IV of the Treaty, violates the inalienable right of States parties to use nuclear energy for peaceful purposes. In fact, by adopting such decisions, the balance of rights and obligations of States parties would be disturbed, the existing discrimination and gap between haves and have-nots in the Treaty would be increased and, finally, the very basis of the fundamental bargain of the Treaty would be destroyed.

8. Furthermore, in recent years, unfortunately the fundamental role of IAEA in the promotion of nuclear energy for peaceful purposes has been increasingly undermined by shortcomings in resources and restrictions imposed by some States. Since the establishment of IAEA, developing countries have continually expressed serious concerns about the policy for funding technical cooperation, based on voluntary contributions that are unpredictable, unsecured and subject to the political motivations of the donors. Safeguards activities are, however, funded from the regular budget. Such a discriminatory policy with respect to two pillars of the Agency's statute and the Treaty has to be changed.

9. Moreover, measures taken by States parties to prevent nuclear proliferation should facilitate rather than hamper the exercise of the recognized rights of developing States parties to the Treaty to peaceful applications of nuclear energy. Imposition of undue restrictions as a cover for implementation of the foreign policy objectives of certain States is a violation of article IV obligations and challenges both the integrity and credibility of the Treaty.

10. Undue restrictions on the transfer of nuclear materials, equipment and technologies for the peaceful uses of nuclear energy should be swiftly removed. Bilateral and multilateral cooperation among States parties to the Treaty under the supervision of IAEA on the peaceful uses of nuclear energy should never be restricted or confined, either by other States or ad hoc export control regimes, such as the Nuclear Suppliers Group. The application of unilaterally enforced export control regimes, in contravention of the letter and the spirit of the Treaty, has

hampered the access of developing countries to nuclear materials, equipment and technologies for peaceful purposes. It is essential to note the fact that, in the Agency's statute and the Treaty, as well as in the Comprehensive Safeguards Agreement and even the most intrusive instrument, that is, the Additional Protocol, there is no provision to prohibit or restrict enrichment and reprocessing activities. The function of the Agency is merely to verify the declarations of member States.

11. In this context, the new decision of the Nuclear Suppliers Group, the exclusive and non-transparent group which claims to have been established to strengthen the non-proliferation regime, has severely damaged the Treaty. The decision of this group is a clear violation of paragraph 2 of article III, which stipulates that the cooperation of each State party to the Treaty in providing equipment or material for peaceful purposes is not possible "unless the source or special fissionable material shall be subject to the safeguards required by" the Treaty.

12. Said decision, which has been taken under pressure by the United States of America, is also a violation of the commitment of nuclear-weapon States under the 1995 decision on principles and objectives for nuclear non-proliferation and disarmament and the final document of the 2000 Review Conference to promote the universality of the Treaty. Such a decision is another manifestation of double standards and discrimination in implementing the provisions of the Treaty. We ask the Review Conference to seriously consider this issue.

13. On the contrary, measures need to be taken to ensure that the inalienable rights of all States parties under the provisions of the preamble and articles of the Treaty are all fully protected. No States parties should be limited in exercising their rights under the Treaty based on allegations of non-compliance. The inalienable rights of the States parties, as stipulated in the Treaty, cover all aspects of peaceful technologies and are not limited to specific areas. In this connection, the 2000 Review Conference reiterated that "each country's choices and decisions in the field of peaceful uses of nuclear energy should be respected without jeopardizing its policies or international cooperation agreements and arrangements for peaceful uses of nuclear energy and its fuel-cycle policies". Unfortunately, for the first time in the history of IAEA, the promotional statutory pillar of the statute has been put in serious jeopardy through politically motivated decisions of the Security Council, which is trying to dictate to the Agency whether, how and when to deprive a developing member State of technical cooperation that is solely intended for humanitarian and peaceful uses. The authority of IAEA as the sole competent technical international organization in respect of this issue has been seriously undermined.

14. It should be once again reiterated that arbitrary and self-serving criteria and thresholds regarding proliferation-proof and proliferation-prone technologies can and will only undermine the Treaty. The Islamic Republic of Iran, for its part, is determined to pursue all legal areas of nuclear technology, including fuel cycle and enrichment technology, exclusively for peaceful purposes. But no one should be under the illusion that guarantees can theoretically or practically amount to cessation, or even suspension, of a legal activity that has been and will be carried out under the fullest and most intrusive IAEA supervision.

15. The Islamic Republic of Iran is of the view that, to strengthen the effectiveness and credibility of the Treaty and to put an end to the selective implementation of the articles of the Treaty, the 2010 Review Conference should intensify its work in order

to prevent further non-compliance of industrial States parties with undertakings under article IV. To ensure the adoption of tangible measures to promote the implementation of the inalienable rights of all States parties, particularly developing countries, in order to enjoy their established right under the Treaty and to have full access to nuclear materials, technologies, equipment and scientific and technological information for peaceful purposes and, in doing so, preserve the delicate balance between the rights and obligations arising from the Treaty, any new division among the States parties and interpretations incompatible with the letter of the Treaty should be strictly avoided.

16. According to article IV of the Treaty, nothing in the Treaty shall be interpreted as affecting the inalienable right of all parties to the Treaty to develop the research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of the Treaty.

17. It also stipulates that all the parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone, or together with other States or international organizations, to the further development of applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States parties to the Treaty, with due consideration for the needs of the developing areas of the world.

18. The safeguards required by article III shall also be implemented in a manner designed to comply with article IV of the Treaty and to avoid hampering the economic or technological development of the parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes, in accordance with the provisions of this article and the principle of safeguarding set forth in the preamble of the Treaty.

19. The recent proposals on limitations or restrictions on the inalienable right of States parties to develop a national fuel cycle are a matter of serious concern. In this regard, the 2010 Review Conference should reaffirm this right and make recommendations that any explicit or implicit decision or act intended to hamper the nuclear policies of States parties to develop a national fuel cycle must be avoided.

20. On the other hand, certain countries use the Board of Governors of IAEA and the Security Council as tools for advancing their political intentions and to interrupt the peaceful activities of a State party.

21. To this end, they may commit numerous breaches of their obligations, which can in turn result in infliction of damages on a State party. Some of the breaches and consequential damages are as follows:

(a) Imposing unnecessary costs on the Agency;

(b) Violation of article IV of the Treaty by hampering peaceful nuclear activities of a State party;

(c) Interrupting peaceful nuclear activities of a State party through extensive inspections and releasing confidential information (the continued presence of the inspectors in nuclear facilities can hinder the scientists and the personnel of the facilities from doing their jobs in a tranquil environment, while the safeguards shall

be implemented in a manner to avoid undue interference in a State party's peaceful nuclear activities and in particular in the operation of facilities);

(d) Imposing measures beyond the existing legal commitments of a State party, including suspension of peaceful nuclear activities, which can cause many human, financial and political damages;

(e) Breach of article XI of the statute of IAEA on facilitating technical cooperation projects;

(f) Involving the Security Council unlawfully;

(g) Interrupting technical cooperation of the Agency with a State party while the raison d'être of the Agency is to help the member States in this field;

(h) Damage to the prestige of the Agency;

(i) Intellectual damages, particularly damage to the reputation of a State party.

22. Given the above-mentioned points, the question arises of who should compensate for these damages and how the compensation should be made.

23. Owing to the importance of the issue and since no mechanism is designed under the Treaty in this regard, the Islamic Republic of Iran proposes the establishment of a mechanism by the 2010 Review Conference to examine cases of non-compliance with article IV and the consequential damages inflicted on States parties through violation of this article by any State party.

24. In such a mechanism, the implementation of the provisions of article IV and compliance with the obligations of the nuclear technology owners, including the facilitation of international cooperation, should be duly verified, and those countries that are responsible for the violation of the article IV provisions should compensate for the damages inflicted on States parties resulting from their actions.